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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1976

No. 76-401

CITY OF LAWRENCE, INDIANA, Appellant,

v.

CITY OF INDIANAPOLIS, INDIANA, MARY D.
AIKINS, Auditor of the State of Indiana; and
LAWRENCE L. BUELL, Treasurer of Marion County,
Indiana, for and on behalf of the Department
of Transportation of Consolidated First Class
City of Indianapolis, Indiana, Appellees.

**ON APPEAL FROM THE SUPREME COURT OF
INDIANA**

MOTION TO DISMISS OR AFFIRM

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City of Indianapolis, Indiana, Appellees.

**ON APPEAL FROM THE SUPREME COURT OF
INDIANA**

MOTION TO DISMISS OR AFFIRM

The Appellees move the Court to dismiss the appeal herein and/or affirm the judgment of the Court of Appeals of Indiana, on the grounds that this appeal does not present a substantial Federal question, in that the enactment of said statute and its application in this case is not repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States, nor have any other Federal rights been denied the Appellant.

I.

THE STATUTE INVOLVED AND THE NATURE OF THE CASE

A. The Statute

The appropriate text of the statutes involved in this appeal are set out verbatim herein, marked as Appendix C. They are: Acts 1967, Chapter 296, § 1, p. 966; IC 1971, 6-7-1-32; IND. ANN. STAT., § 64-2928d (Burns, 1972); Acts 1967, Chapter 311, § 19, p. 1195; IC 1971, 19-5-3-18; IND. ANN. STAT., § 36-3449(a) (Burns, 1972); and Acts 1969, Chapter 173, § 1403, p. 357; IC 1971, 18-4-14-3; IND. ANN. STAT., § 48-9505 (Burns, 1972).

B. The Proceedings Below

Appellant filed its complaint to recover \$275,278.08, plus interest, which is set off on the State Auditor's official records as Appellant's distributive share of cigarette tax money for its cumulative capital improvement fund. The State Auditor paid Appellant its distributive share in December, 1965 and June, and December, 1966. Beginning with the distribution in June of 1967 through December of 1969, said Appellee-Auditor paid Appellant's distributive share to the Mass Transportation Authority of Greater Indianapolis, and from June, 1970, through June of 1972, said Auditor paid Appellant's distributive share to the Marion County, Indiana, Treasurer for the use of the Department of Transportation of the City of Indianapolis. The cause was placed at issue by the respective answers of the Appellees.

Thereafter, Appellant duly filed its motion for summary judgment, along with certifications of the Auditor of the State of Indiana, showing the amount of Appellant's distri-

butions and to whom and when they were paid, and a memorandum supporting said motion for summary judgment. Counter-affidavits of the Appellees, their opposing brief, certified copies of bills and journal entries, were filed in opposition to said motion for summary judgment. Appellant then filed its reply brief.

On July 26, 1972, the trial court entered its Findings of Fact, Conclusions of Law and Judgment, which were in favor of the Appellees on their answers and the Appellees' oral motion for summary judgment, and against the Appellant, on its complaint and written motion for summary judgment. A verbatim statement of said Findings of Fact, Conclusions of Law, and Judgment thereon, omitting the caption, is appended herein as Appendix A.

On July 31, 1972, Appellant filed its motion to correct errors and brief supporting motion to correct errors. This motion to correct errors was overruled on July 31, 1972. The judgment of the trial court was affirmed by the Court of Appeals, State of Indiana, Second District, on December 18, 1975. A copy of the opinion is appended hereto as Appendix B.

Thereafter, Appellant's Petition for Rehearing was denied by the Court of Appeals, Second District, State of Indiana, on January 20, 1976. Thereafter, Appellant's Petition for Transfer to the Indiana State Supreme Court was denied on June 21, 1976, with notice of this appeal being filed with the Clerk of the Supreme Court of Indiana on September 3, 1976.

II.

ARGUMENT

THIS APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

The Appellant herein attempts to have this Court review the decision by appeal under Title 28, United States Code, Section 1257(2). Specifically, the Appellant herein alleges that the enactment of the statute involved and its application is repugnant to the provisions of the 14th Amendment to the Constitution of the United States.

Initially, it should be pointed out that the Appellant herein has no vested right in the cigarette tax fund, and the General Assembly may constitutionally reallocate this fund at any time. The Appellant attempts to argue that a re-allocation by legislative action of the Cigarette Tax Fund is arbitrary and unreasonable. The Indiana decisions are completely against the Appellant on these points. In *State ex rel. Mass Transportation Authority of Greater Indianapolis v. Indiana Revenue Board, et al.*, 1968, 144 Ind. App. 63, 242 N.E.2d 642, Rehearing Denied, with Opinion, 253 N.E.2d 725, the court stated the rule as follows:

"In *County Department of Public Welfare v. Pott-hoff*, 220 Ind. 574, at page 582 . . . our Supreme Court stated that:

' . . . counties are political subdivisions of the state and that as such they have no vested or contractual rights in the disposition of funds derived from general taxation therein which are superior to the

public policy of the state as declared by the legislature.' "

Cities, such as the Appellant herein, also being political subdivisions of the state, have no vested or contractual rights as set out in *County Department of Public Welfare, supra*.

A similar holding has been made by the Supreme Court of the United States regarding constitutional protection and rights of a city. In *Williams v. Mayor and City Council of Baltimore* (1932) 289 U.S. 36, 77 L. Ed. 1015, 53 S. Ct. 431, the City of Baltimore argued that a Maryland statute denied the city equal protection under the Fourteenth Amendment. The Fourth Circuit agreed. This Supreme Court reversed the Fourth Circuit and held that a city had no rights under the Fourteenth Amendment. Justice Cardozo stated the rule very explicitly:

"A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal constitution which it may invoke in opposition to the will of its creator." 77 L.Ed.1015, at 1020.

Also, *Trenton v. New Jersey*, 262 U.S. 182, 67 L. Ed. 937, 43 S. Ct. 534, and *Newark v. New Jersey*, 262 U.S. 192, 67 L. Ed. 943, 43 S. Ct. 539.

It has been recognized throughout the history of our legal system that there is a substantial distinction between the constitutional rights of private and public entities.

In *Dartmouth College v. Woodward*, (1819) 4 Wheat. 518, the Supreme Court discussed the constitutional rights of political subdivisions, vis-a-vis actions of their political superior, the state itself. The Court explained that since political subdivisions, such as cities, towns and municipi-

palities, are but creatures of the state, they have no rights independent of those expressly provided by the state. Such political subdivisions, therefore, can assert no "constitutional rights" in opposition to the actions of the state. 4 Wheat. at 661.

This principle has been reaffirmed and expanded in substantial numbers of cases. *Newark, supra*, *Trenton, supra*, and *Worcester v. Worcester Consol. St. Ry.* (1905) 196 U.S. 539, 25 S. Ct. 327, 49 L. Ed. 591.

In *Trenton, supra*, the Court stated the doctrine thusly:

"A municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the state, exercising and holding powers and privileges subject to the sovereign will." *Barnes v. District of Columbia*, 91 U.S. 540, 544, 545, 23 L. Ed. 440.

It has further been held, "The power of the state, unrestrained by the contract clause of the 14th Amendment, over the rights and property of cities held and used for 'governmental purposes' cannot be questioned." *Trenton, supra*, 262 U.S. at 187-188, 43 S. Ct. at 1537.

Therefore, the Appellant is not a "person" as stated in the Fourteenth Amendment to the Constitution of the United States. Accordingly, there is no Federal question for this Court to take jurisdiction and review the decision which is appealed herein.

III.

CONCLUSION AND PRAYER FOR RELIEF

There is no substantial Federal question presented by this appeal, and neither is the Appellant afforded any protection under the Fourteenth Amendment to the Constitution of the United States, nor have any other Federal rights been denied the Appellant herein.

WHEREFORE, Appellees pray that this appeal be dismissed, or in the alternative, reaffirm the judgment entered below, and for all other proper relief.

Respectfully submitted,

DAVID R. FRICK

WILLIAM L. SOARDS

Counsel for Appellees

APPENDIX

APPENDIX A

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE SUPERIOR COURT OF MARION COUNTY
CAUSE NO. S471 1332 ROOM NO. 4

CITY OF LAWRENCE, INDIANA,)
)
) Plaintiff,)
)
) vs.)
)
CITY OF INDIANAPOLIS, INDIANA;)
MARY D. AIKINS, Auditor of the)
State of Indiana; and)
LAWRENCE L. BUELL, Treasurer of)
Marion County, Indiana, for and)
on behalf of the Department of)
Transportation of Consolidated)
First Class City of Indianapolis,)
Indiana,)
) Defendants.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND JUDGMENT**

Comes now City of Lawrence, Indiana, "Plaintiff", and
City of Indianapolis, Indiana, Mary D. Aikins, and
Lawrence L. Buell, Defendants, and the cause being at
issue on Plaintiff's Complaint and Defendants' Answers
filed herein, which Complaint and Answers read as follows:

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(H.I.)

And Plaintiff having filed herein its Motion For Summary Judgment, supported by "Certification of Auditor of State" and "Additional Certification of Auditor of State", which Motion and Certifications read as follows:

(H.I.)

And Defendants City of Indianapolis and Lawrence L. Buell having filed herein Affidavits of Defendant Buell and Fred L. Armstrong, Certified Copies of Bills, and the printed and bound 1967 Indiana Senate Journal and 1967 Indiana House Journal, all in opposition to Plaintiff's Motion for Summary Judgment, which Affidavits, Certified Copies, and Journals read as follows:

(H.I.)

and Defendants City of Indianapolis and Buell having moved orally for summary judgment in favor of all Defendants pursuant to Trial Rule 56 (b) and offered such Affidavits, Certified Copies, and Journals in support of such Motion,

And the Court having set and held a hearing on Plaintiff's and Defendants' Motions for Summary Judgment and having considered such Complaint and Answers, Certifications of Auditor of State, Affidavits, Certified Copies of Bills, Journals, and the applicable decisions and statutes, now finds that:

Findings of Fact

1. The 1967 General Assembly enacted the Mass Transportation Authority Act (IC 19-5-3-1, *et seq.* Burns Ind. Stat. Anno. 36-3431 *et seq.*) Section 10 (8) of such Act (IC 19-5-3-18(8) Burns Ind. Stat. Anno. 36-3449 (8))

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directs Defendant Auditor to distribute to the Mass Transportation Authority of the City of Indianapolis all cigarette taxes as were previously distributable to Plaintiff's cumulative capital improvement fund.

2. Section 20 (10) of House 8111 1195 as introduced in the 1967 Indiana General Assembly required eighty per cent (80%) of such cigarette taxes to be distributed to the Mass Transportation Authority and the balance to Plaintiff's cumulative capital improvements fund. Such Bill was amended by the House to require all of such cigarette taxes to be distributed to such fund. The 1967 Senate rejected such amendment, as did the Senate-House Conference Committee. Such Bill, as enacted, requires the distribution described in paragraph 1.

3. After the enactment of the Mass Transportation Authority Act, Defendant Auditor of the State of Indiana set off on its books the following amounts under Plaintiff's name:

(a) June, 1967, distribution	\$ 9,971.58
(b) December, 1967, distribution	20,724.70
(c) June, 1968, distribution	19,268.58
(d) December, 1968, distribution	20,217.73
(e) June, 1969, distribution	16,162.90
(f) December, 1969, distribution	23,751.16
(g) June, 1970, distribution	19,406.25
(h) December, 1970, distribution	21,965.26
(i) June, 1971, distribution	20,692.96
(j) December, 1971, distribution	61,165.18
(k) June, 1972, distribution	41,951.78

4. From June, 1967, through December 1969, Defendant Auditor made distributions of the above amounts to the Mass Transportation Authority of the City of Indianapolis,

instead of making them to the Plaintiff's Cumulative Capital Improvement Fund.

5. From June, 1970, through June, 1972, Defendant Auditor made distributions of the above amounts to the Marion County Treasurer for the use of the Department of Transportation of the City of Indianapolis, instead of making them to the Plaintiff's Cumulative Capital Improvement Fund.

6. Neither the Treasurer of Marion County nor the Controller of the City of Indianapolis receives from Defendant Auditor an analysis of cigarette tax funds distributed to them.

7. The Indiana General Assembly in 1967 enacted Ch. 296, Sec. 1, page 966, the same being the last two paragraphs of Ind. Anno. Stat. Section 64-2928 (d), Burns 1971 (IC 6-7-1-32).

8. The 1967 General Assembly intended the 1967 amendment to the Cigarette Tax Act as contained in IC 6-7-1-32 (*Burns Ind. Stat. Anno. 64-2928(d)*) to apply only to such section and did not intend for it to limit or modify the cigarette tax distributions to the Mass Transportation Authority required by the Mass Transportation Act (IC 19-5-3-18(8), *Burns Ind. Stat. Anno. 36-3449(8)*).

9. The intent of the 1967 General Assembly was that cigarette taxes previously distributed to Plaintiff's cumulative capital improvement fund should thereafter be distributed to the Mass Transportation Authority of the City of Indianapolis.

10. The 1967 amendments to the Cigarette Tax Act and the Mass Transportation Act, when viewed together, are consistent and are not ambiguous nor in conflict with each other.

11. The 1969 Consolidated First Class Cities Act (IC 18-4-1-1, *et. seq. Burns Ind. Stat. Anno. 48-9101 et seq.*) transferred such cigarette taxes to the Department of Transportation of the City of Indianapolis. IC 18-4-14-3 (*Burns Ind. Stat. Anno. 48-9505*) was not intended to return such taxes to Plaintiff.

12. There is no genuine issue as to a material fact.

Conclusions of Law

1. The 1967 amendment to the Cigarette Tax Act and the Mass Transportation Act are consistent and not ambiguous nor in conflict with each other.

2. The intent of the 1967 General Assembly was that cigarette taxes previously distributed to Plaintiff's cumulative capital improvement fund should thereafter be distributed to the Mass Transportation Authority of the City of Indianapolis.

3. The 1969 Consolidated First Class Cities Act (IC 18-4-1-1, *et seq. Burns Ind. Stat. Anno. 48-9101 et seq.*), transferred such cigarette taxes to the Department of Transportation of the City of Indianapolis. IC 18-4-14-3 (*Burns Ind. Stat. Anno. 48-9505*) was not intended to return such taxes to Plaintiff.

4. The cigarette taxes distributable to Plaintiff's cumulative capital improvement fund prior to the enactment of the 1967 Mass Transportation Act should have, after the effective date of such Act, been distributed to the Mass Transportation Authority of the City of Indianapolis or to the Treasurer of Marion County for the use of the Department of Transportation of the City of Indianapolis. All distributions so made by Defendant Auditor are proper and in accordance with the laws of the State of Indiana.

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5. The distribution of cigarette taxes to the Mass Transportation Authority or the Treasurer of Marion County required by the 1967 Mass Transportation Act is constitutional.

6. The law is with Defendants.

7. Defendants City of Indianapolis, Lawrence L. Buell, and Mary D. Aikins are entitled as a matter of law to summary judgment in their favor on all issues of fact or law raised by Plaintiff's Complaint.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that:

1. The Court finds the facts in favor of Defendants.

2. The law is with Defendants.

3. Judgment is hereby granted in favor of Defendants City of Indianapolis, Lawrence L. Buell, and Mary D. Aikins on their Answers, and the defendants' City of Indianapolis and Buell's Motion for Summary Judgment and against Plaintiff City of Lawrence on its Complaint and Motion for Summary Judgment.

4. All cigarette tax funds distributable to the cumulative capital building fund of Plaintiff City of Lawrence prior to the enactment of the 1967 Mass Transportation Act which have subsequently been distributed by Defendant Mary D. Aikins, Auditor, or her predecessors in office, to the Mass Transportation Authority of the City of Indianapolis or the Treasurer of Marion County for the use of the Department of Transportation of the City of Indianapolis have been distributed in accordance with the laws of the State of Indiana.

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5. Plaintiff City of Lawrence shall take nothing by way of its complaint filed herein.

/s/ Frank R. Symmes, Jr.

JUDGE, Superior Court of
Marion County, Room No. 4

Dated:
July 26, 1972

CITY-COUNTY LEGAL DEPARTMENT
2560 City-County Building
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APPENDIX B

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anapolis, Indiana and
Lawrence L. Buell, Treasurer
of Marion County.

IN THE

Court of Appeals of Indiana

SECOND DISTRICT

CITY OF LAWRENCE, INDIANA,)
Appellant,)
v.)
CITY OF INDIANAPOLIS,)
INDIANA;)
MARY D. AIKINS, Auditor of the)
State of Indiana; and LAWRENCE L.)
BUELL, Treasurer of Marion County,)
Indiana, for and on behalf of the)
Department of Transportation of)
Consolidated First Class City of)
Indianapolis, Indiana,)
Appellees.)

NO. 2-174 A 27

APPEAL FROM THE SUPERIOR COURT OF MARION
COUNTY, ROOM NO. 4

The Honorable Frank A. Symmes, Jr., Judge

WHITE, J.

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The appellant City of Lawrence (Lawrence), a third class city located in Marion County, instituted this action by filing its complaint alleging that since 1967 it had not received its proper share of distributions made from the cigarette tax fund, that a portion of said proper share had been wrongfully paid by the Auditor of State first to the Mass Transportation Authority of Greater Indianapolis and subsequently to the Department of Transportation of the Consolidated City of Indianapolis, and that the recipients of said funds have been and are wrongfully withholding said funds from Lawrence. The complaint sought to have the funds alleged to have been improperly distributed declared the property of Lawrence, that the holders of said funds be ordered to turn said funds and interest thereon over to Lawrence, and that the Auditor of State be ordered to make future distributions of cigarette tax funds in accord with law.

The trial court entered summary judgment in favor of the defendants and Lawrence has appealed that judgment.

We affirm.

The two questions presented by Lawrence's complaint are straightforward questions of statutory construction which are buried in prolix pleadings. The first question involves two enactments of the 1967 Regular Session of the General Assembly, chapter 296, which amended the cigarette tax act, and chapter 311, which created a Mass Transportation Authority in Marion County.¹ The question is: In view of the aforementioned enactments, is it Lawrence or is it the Mass Transportation Authority that is the proper recipient of certain moneys distributed from

¹ Both Acts were approved on March 11, 1965[7]. Chapter 296, amending the cigarette tax act, declared an emergency and became effective July 1, 1965[7]; Chapter 311, creating the Mass Transportation Agency, declared an emergency and became effective upon passage.

the cigarette tax fund? The second question involves the effect of Acts of 1969, chapter 173 (Uni-Gov), on the distribution of the same moneys. The question is: Is it Lawrence or is it the Department of Transportation of the Consolidated City of Greater Indianapolis (which assumed the duties of the Mass Transportation Authority) that is the proper recipient of certain moneys distributed from the cigarette tax fund?

I.

The cigarette tax act (Acts of 1947, ch. 222) levies a tax on the sale of cigarettes and has evolved by amendment from a simple source of money for the State's general fund into a source of money to be distributed in a somewhat complex pattern to the State general fund, to various specified state agencies, and to local municipal corporations for specified purposes. We need not delve into the development of the pattern of distribution of the fund, nor even describe that pattern in detail. It is sufficient to note that prior to the effective date of the 1967 Acts in question, the cigarette tax act, as then last amended by Acts of 1965, ch. 225, created a cigarette tax fund and, in three separate sections, appropriated portions of that fund to the cities and towns in Indiana. Section 27b appropriated a portion of the cigarette tax fund to the general funds of cities and towns; Sections 27c and 27d each appropriated a portion of the cigarette tax fund to the cumulative capital improvement funds of the cities and towns. In all three instances the appropriation was to be allocated among and distributed to the cities and towns in proportion to their populations.

The 1967 amendment of the cigarette tax act, Acts of 1967, ch. 296 (hereinafter called the "Tax Amendment"), did not change the basic distribution of the cigarette tax

fund, but it did add special provisions concerning the distribution to be made to the Cumulative Capital Improvement Fund of Indianapolis.

Section 27d was amended by adding to it the following language:

"Except, that, on and after July 1, 1967, the sum of Three Hundred Fifty Thousand Dollars out of the appropriation theretofore made for distribution to the Cumulative Capital Improvement Fund of cities of the first class pursuant to this section is hereby appropriated to the Capital Improvement Board of Managers of the county created by Chapter 326 of the Acts of the Indiana General Assembly of 1965 to be used for the payment of principal and interest on any bonds issued or to be issued pursuant to the authority of said Chapter 326 of the Acts of 1965 or any acts amendatory or supplemental thereto. Said sum shall be distributed semi-annually on the first day of June and December in each year and paid to the treasurer of such County upon warrants issued by the Auditor of State. The County Treasurer shall deposit all amounts received pursuant to this section in the Capital Improvement Bond Fund created by Section 13 of said Chapter 326 of the Acts of 1965. It is the intent of the General Assembly that said appropriation to such board of Managers shall be deducted from the distributive share of cities of the first class only, and nothing herein shall be construed as reducing the amount theretofore appropriated for distribution to the Cumulative Capital Improvement Fund of other cities and towns of the state.

"Provided further, that the remaining funds available for distribution to the Capital Improvement Fund of cities of the first class pursuant to this Act is hereby appropriated to the Metropolitan Thoroughfare Authority created pursuant to Acts 1963, ch. 386, or to any thoroughfare or transportation Authority subsequently created in a city of the first class for use

by such Authority. Said funds shall be distributed semi-annually on the first day of June and December each year and paid to the treasurer of the county in which such Authority is situated upon warrants issued by the Auditor of State. The county treasurer shall accept said funds pursuant to said Act and the custody of such funds shall be governed by the provisions of said Act. It is the intent of the General Assembly that said appropriation to such Authority shall be appropriated from the distributive share of cities of the first class only, and nothing herein shall be construed as reducing the amount theretofore appropriated to the Cumulative Capital Improvement Fund of other cities and towns of the State.

Section 27c was also amended to provide in pertinent part:

"(c) . . . provided, that all sums to be distributed in accordance with this subsection to Cumulative Capital Improvement Funds in cities of the first class is hereby appropriated to the Metropolitan Thoroughfare Authority created pursuant to Acts 1963, ch. 386 or to any thoroughfare or transportation authority subsequently created in a city of the first class, for use by any such Authority said funds shall be distributed semi-annually on the first day of June and December each year and paid to the treasurer of the county in which such Authority is situated upon warrants issued by the Auditor of State. The county treasurer shall accept said funds pursuant to said Act and the custody of such funds shall be governed by the provisions of said Act.

"It is the intent of the General Assembly that said appropriation to such Authority shall be appropriated from the distributive shares of cities of the first class only, and nothing herein shall be construed as reducing the amount theretofore appropriated to the Cumulative Capital Improvement Fund of other cities and towns of the State . . ."

Thus the Tax Amendment appropriated to the Capital Improvement Board of Managers of Marion County and to the Metropolitan Thoroughfare Authority of Marion County, two county-wide agencies, all the cigarette tax fund moneys that would otherwise be distributed to the cumulative capital improvement fund of Indianapolis. The Tax Amendment also repetitiously specified that it, the Tax Amendment, was not to adversely affect the distribution of cigarette tax funds to the cumulative capital improvement fund of any other city or town, including, though not specifying, Lawrence.

The 95th General Assembly subsequently enacted Acts of 1967, chapter 311 (hereinafter called the "MTA Act"), which created the Mass Transportation Authority of Marion County, a distinct municipal corporation with boundaries coterminous with the boundaries of Marion County.

This new municipal corporation was the successor to the Metropolitan Thoroughfare Authority referred to in the Tax Amendment, a fact clearly shown by the pertinent part of Section 3 of the MTA ACT:

"(14) Upon the effective date of the enactment of this act, the [Mass Transportation] Authority shall succeed to and assume all of the powers, property, obligations and duties of the Metropolitan Thoroughfare Authority of the County authorized by Acts 1963, c. 386. The board of directors created pursuant to that act shall serve as directors of the [Mass Transportation] Authority until their successors have been appointed and qualified as provided in this act."

It is thus clear that even if the MTA Act had no provisions whatever for the funding of the Mass Transportation Authority, that agency, as the successor of the Metropolitan Thoroughfare Authority, would be entitled to the funds allocated to the Thoroughfare Authority by the Tax

Amendment (i.e., the portion that would otherwise be allocated to Indianapolis' capital improvement fund less \$350,000.00 appropriated to the Capital Improvement Board). It is, of course, equally clear that absent any special funding provisions in the MTA Act the allocation and distribution of cigarette tax funds to the cumulative capital improvement funds of other cities and towns in Marion County, including Lawrence, would be unaffected by the passage of that MTA Act.

However, the MTA Act does specifically mention the cigarette tax fund distribution. Section 19 of the MTA Act concerns the financing of the newly created municipal corporation and provides in pertinent part:

"Financing. (a) In order to provide funds for carrying out the duties, powers and obligations of the Authority, the Authority shall receive the following money on and after the effective date of this Act, except as provided in this section:

• • • • •

"(8) Any and all money in the Cigarette Tax Fund of the State available for distribution to the cities and towns in the County for deposit in the Cumulative Capital Improvement Funds of such cities and towns pursuant to Acts of 1947, c. 222, as last amended by Acts of 1965, c. 225, or as later amended or superseded. The Auditor of State shall pay over such money, as it becomes available for distribution, to the Controller of the Authority. Provided, however, that such money allocated to cities and towns for their respective general funds is not included herein and shall continue to be distributed and paid to the cities and towns in the County as provided by said Acts of 1947, c. 222, [§ 27b, not involved herein] as amended or superseded. Provided, further, that all funds appropriated to the Capital Improvement Board of Managers of the County by the 95th General Assembly from such cigarette tax funds shall be paid to the Treasurer of

the County for the use of said Capital Improvement Board, and nothing herein shall be deemed to affect or reduce said appropriations."

All parties agree that from the semi-annual distribution in July, 1967² to and including the distribution in December, 1969, the Auditor of State computed Lawrence's pro rata allocation of the appropriations to the cumulative capital improvement funds of cities and towns as provided in sections 27c and 27d of the cigarette tax act, but forwarded that share to the Mass Transportation Authority rather than to Lawrence.

Appellant Lawrence first argues that the intent of the 95th General Assembly in enacting the Tax Amendment and the MTA Act was to appropriate to the Mass Transportation Authority only the cigarette tax fund allocation to Indianapolis' cumulative capital improvement fund as specified in the Tax Amendment. To support this contention Lawrence recites in great detail the history of the two enactments as they progressed through the legislative process, listing amendments adopted and amendments rejected as well as specifying dates and results of votes thereon. Lawrence also points to sections 15 and 16 of the MTA Act, which sections authorize the Mass Transportation Authority to adopt a budget and to levy property taxes in the amount necessary to fully implement that budget. Lawrence argues that these sections prove that the Authority is to receive its funds from property taxes levied on all taxable property in Marion County rather than from Lawrence's rightful share of the cigarette tax fund. Lawrence concluded that the language contained in section 19(8) of the MTA Act, set out above, is not intended to be in itself an appropriation of any portion of the cigarette

² The MTA Act declared an emergency and became effective upon passage, March 11, 1967.

tax fund, but is instead intended merely to authorize the Mass Transportation Authority to receive and accept whatever moneys might be appropriated to it by the Tax Amendment.

Lawrence's arguments must fail. Section 19(8) of the MTA Act clearly and unambiguously states that the Mass Transportation Authority is to receive "Any and all money in the Cigarette Tax Fund of the State available for distribution to the cities and towns in the County for deposit in the Cumulative Capital Improvement Funds of such cities and towns..."

There is no conflict between Section 19(8) and the tax levying power granted by sections 15 and 16. Indeed, section 19 of the MTA Act specifies ten different sources of funds for the Mass Transportation Authority. The property taxes authorized by sections 15 and 16 are the second specified source, cigarette tax fund distributions are the eighth.

Nor are the Tax Amendment and the MTA Act conflicting. The Tax Amendment appropriates a certain portion of the cigarette tax fund to the Mass Transportation Authority; the MTA Act appropriates that same portion plus an additional portion. Each is a separate appropriation; neither, on its face, limits the other. Nor, apparently, was the MTA Act passed in ignorance of the Tax Amendment since it carefully and specifically preserves the appropriation to the Capital Improvement Board contained in that enactment.

Finally, the language of Section 19(8) of the MTA Act is clearly language of appropriation rather than of authorization to accept. It explicitly directs the Auditor of State to pay over the moneys specified therein to the Controller of the Authority; it impliedly authorizes the Controller

to accept those moneys, it (subsection 8) neither explicitly nor impliedly authorizes the Controller to accept any funds that might be appropriated by other legislation. Such an appropriation of cigarette tax fund moneys by an independent and basically unrelated enactment is authorized by the cigarette tax act which, in its section 27, establishes the cigarette tax fund "for the purposes for which appropriations are made by this act or other law."

As was said in *Meade Electric Co. v. Hagberg* (1959), 129 Ind. App. 631, 640, 159 N.E. 2d 408, 413:

"There are numerous cases which follow the rule that where the language or statute is clear and plain there is no room for construction, and courts have no power to supply supposed defects or omissions or to resort to construction for the purpose of limiting or extending its operation, and judicial construction is not allowable to interpret the law which is plain upon its face. *Taelman v. Bd. of Fin. of School City of South Bend* (1937), 212 Ind. 26, at page 33, 6 N.E. 2d 557, *Bd. of Election Commissioners of Gibson Co. v. State ex rel. Sides* (1897), 148 Ind. 675, at 678, 48 N.E. 226; *Poyser v. Stangland* (1952), 230 Ind. 685, 106 N.E. 2d 390."

Lawrence's second argument is that if the MTA Act be interpreted as providing that the Mass Transportation Authority receive the cigarette tax fund allocation to Lawrence's cumulative capital improvement fund, then that portion of the Act is a special and local law in violation of Article 4, Sections 22 and 23, of the Indiana Constitution, and a violation of the privileges and immunities clauses of both the Indiana and United States Constitutions.

Lawrence's constitutional arguments are somewhat interwoven but the thrust of those arguments is:

1. That so interpreted the MTA Act arbitrarily distinguishes between Lawrence and cities and towns located outside Marion County in relation to cigarette tax fund distributions;

2. That so interpreted the MTA Act takes money that should be distributed to Lawrence, and thus is the property of Lawrence, and gives that money to the City of Indianapolis.

Lawrence argues that it is a city having the same duties, functions and responsibilities as all other cities in the state and therefore has the same right as do those cities to its proper share of cigarette tax fund money. While admitting that classification is permissible in certain instances (e.g., "Plaintiff has no quarrel with the legislative determination that the City of Indianapolis was of sufficient size it would allow only that City to use its cigarette tax funds in a manner different from all other cities"), Lawrence maintains that the classification must be reasonable and that, unlike Indianapolis, Lawrence possesses no special characteristic that would justify treating it differently from other cities in relation to cigarette tax funds. Lawrence's argument would be feasible if the classification in relation to cigarette tax funds were made by the Tax Amendment and if the classification singled out Lawrence by some arbitrary standard (i.e., cities located next to an Army base in the northeast corner of a county containing a city of the first class). However, the classification is made by the MTA Act, an act applying to "counties in which a city of the first class is situate", and applying equally to all cities and towns located in counties within that classification. Lawrence does not question the validity of the legislative determination that counties in which a city of the first class is situate have transportation problems sufficiently complex to create a special authority in

such counties, nor does Lawrence claim any difference in treatment between it and all other cities and towns in such counties.

Lawrence's argument that its moneys were given to the City of Indianapolis appears to be derived from a misunderstanding of the MTA Act. Although the entity created therein is styled "Mass Transportation Authority of Greater Indianapolis", it was not intended to be an agency or division of the City of Indianapolis. It was, instead, created as a separate and distinct municipal corporation with boundaries coterminous with the boundaries of Marion County (§ 2), boundaries that include both the City of Indianapolis and the City of Lawrence. As originally established the Board of Directors of the Authority consisted of six appointed members, half of whom were to be appointed by county boards: two by the county commissioners, one by the county council (§ 4). Acts of 1969, ch. 235, § 3, amended the MTA Act to create a five member board of directors, three of whom were to be appointed by the county council.³ The Authority's jurisdiction, duties and responsibilities were to be exercised throughout the county (§ 3).

Under no reasonable interpretation of the MTA Act could it be said that those funds given to the Authority were funds given to Indianapolis. In beneficial effect they were given to all of Marion County, including Lawrence. That being true, were we to interpret the legislation involved herein as Lawrence desires the net result would be to transfer a part of Indianapolis' share of the cigarette tax fund to the Mass Transportation Authority for the benefit of Lawrence and the other cities and towns in

³ This amendment was in practical effect nullified by Acts of 1969, Chapter 173 (Uni-Gov), which abolished both the county council and the Mass Transportation Agency.

Marion County while permitting those same cities and towns to retain all of their share of such funds for their own use.

There is no unfairness and no constitutional defect in the statutory provision that the Mass Transportation Authority of Greater Indianapolis receive all the payments from the cigarette tax fund that would otherwise be distributed to the cumulative capital improvement funds of the individual cities and towns located within the boundaries of the Authority.

II.

Lawrence further contends that even if the MTA Act did lawfully appropriate some of Lawrence's share of cigarette tax fund distribution to the Mass Transportation Authority that appropriation was terminated by the passage of Acts of 1969, chapter 173 (Uni-Gov), and to sustain this proposition presents the same arguments it presented to sustain its first contention (i.e., legislative intent and unconstitutionality).

Without discussing these arguments individually we note:

1. That section 1401 of the Uni-Gov Act, as found in Ind. Ann. Stat. § 18-4-14-1 (Burns Code Ed.) concerns financing for the Consolidated City and provides in pertinent part:

"(9) Any and all money in the Cigarette Tax Fund of the State available for distribution to the First Class City or any separate authority within the County shall be distributed as follows: All amounts appropriated to the Capital Improvement Board of Managers of the County pursuant to Acts 1947, c. 222, and Acts 1967, c. 296, shall be paid and handled as prescribed and provided by such acts. All amounts distributable

to a transportation authority pursuant to Acts 1947, c. 222, or Acts 1967, c. 311, shall be paid to the Treasurer of the County for the use of the Department of Transportation. Any money distributable to the Consolidated City for the use of the General Fund thereof shall be paid to the Consolidated City."

2. That section 1003, as found in Ind. Ann. Stat. § 18-4-10-3 (Burns Code Ed.) confers powers, duties and obligations upon the Department of Transportation and provides in pertinent part:

"(b) All Transportation Powers heretofore or hereafter conferred by law upon the board of county commissioners, the county surveyor, the county highway department or the county council of the county.

"(c) All the powers, obligations and duties of the Mass Transportation Authority created by Acts 1967, c. 311, and the Metropolitan Thoroughfare Authority created by Acts 1963, c. 386."

Thus in an act that has already been held constitutional (*Dortch v. Lugar* [1971], 255 Ind. 545, 266 N.E. 2d 25), the General Assembly has clearly expressed the intent that the moneys from the cigarette tax fund that would otherwise be distributed to the Mass Transportation Authority pursuant to the MTA Act (i.e., those funds that, were it not for the MTA Act, would be distributed to the cumulative capital improvement funds of Lawrence and all other cities and towns in Marion County) shall be, instead, distributed to a municipal agency with county-wide jurisdiction, duties and obligation.

The judgment is

Affirmed.

Sullivan, P.J., and Buchanan, J., concur.

APPENDIX C

Statutes Involved

Acts 1947, ch. 222, § 27d, as added by Acts 1965, ch. 225, § 5, p. 524; 1967, ch. 296, § 1, p. 966; IC 1971, 6-7-1-32, IND. ANN. STAT., § 64-2928d (Burns, 1972), reads as follows:

"6-7-1-32 [64-2928d]. Disposition of cigarette tax fund—Cumulative capital improvement fund of cities.

—On and after July 1, 1965 one-third [$\frac{1}{3}$] of the entire amount of the cigarette tax fund of the state of Indiana remaining after charges thereto required by section 27a [6-7-1-29] hereby is appropriated for distribution to the cumulative capital improvement fund of cities and towns in like proportion as the population of each city or town bears to the total population of all cities and towns of the state, as determined by the last preceding United States decennial census. The distribution of said sum shall be computed by the auditor of state semi-annually to effect distribution thereof on the first day of June and December in each year, and the auditor of state shall draw warrants to the treasurer of each city or town as designated in the distribution presented to the auditor by said department of revenue.

"Except, that, on and after July 1, 1967, the sum of three hundred fifty thousand dollars [\$350,000] out of the appropriation theretofore made for distribution to the cumulative capital improvement fund of cities of the first class pursuant to this section is hereby appropriated to the capital improvement board of managers of the county created by chapter 326 [18-4-17-1—18-4-17-21; Burns' §§ 26-2801—26-2821] of the Acts of the Indiana General Assembly of 1965 to be used for the payment of principal and interest on any bonds issued or to be issued pursuant to the authority of

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said chapter 326 [18-4-17-1—18-4-17-21; Burns' §§ 26-2801—26-2821] of the Acts of 1965 or any acts amendatory or supplemental thereto. Said sum shall be distributed semi-annually on the first day of June and December in each year and paid to the treasurer of such county upon warrants issued by the auditor of state. The county treasurer shall deposit all amounts received pursuant to this section in the capital improvement bond fund created by section 13 [18-4-17-13; Burns' § 26-2813] of said chapter 326 of the Acts of 1965. It is the intent of the general assembly that said appropriation to such board of managers shall be deducted from the distributive share of cities of the first class only, and nothing herein shall be construed as reducing the amount theretofore appropriated for distribution to the cumulative capital improvement fund of other cities and towns of the state.

"Provided further, That the remaining funds available for distribution to the capital improvement fund of cities of the first class pursuant to this act is hereby appropriated to the metropolitan thoroughfare authority created pursuant to Acts 1963, ch. 386 [19-5-4-1—19-5-4-21; Burns' §§ 36-3401—36-3420], or to any thoroughfare or transportation authority subsequently created in a city of the first class for use by such authority. Said funds shall be distributed semi-annually on the first day of June and December each year and paid to the treasurer of the county in which such authority is situated upon warrants issued by the auditor of state. The county treasurer shall accept said funds pursuant to said act and the custody of such funds shall be governed by the provisions of said act. It is the intent of the general assembly that said appropriation to such authority shall be appropriated from the distributive share of cities of the first class only, and nothing herein shall be construed as reducing the amount theretofore appropriated to the cumulative capital improvement fund of other cities and towns of the state."

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Acts 1967, ch. 311, § 19, p. 1195; 1969, ch. 235, § 10, p. 871; IC 1971, 19-5-3-18 (a), IND. ANN. STAT., § 36-3449(a) (Burns, 1972), reads as follows:

"19-5-3-18 [36-3449, 48-2468]. Financing. — (a) In order to provide funds for carrying out the duties, powers and obligations of the Authority, the Authority shall receive the following money on and after the effective date [March 11, 1967] of this act, except as provided in this section:

"(1) After December 31, 1969, all of the aggregate of allocated amounts of money collected and available for distribution to the County or the City in the motor vehicle highway account fund of the state as provided for in Acts 1941, c. 168 [8-14-1-1—8-14-1-8], as last amended in Acts 1969 [1965], c. 121, 223, or as later amended or superseded. The auditor of state shall pay over such money, as it becomes available for distribution, to the controller of the Authority. For purposes of such distribution, all roads under the control of the Authority outside of the boundaries of the City shall be a part of the County highway system.

"(2) Any and all money collected from the levy of taxes on property as provided in sections 15 and 16 [19-5-3-14, 19-5-3-15] of this act and collected by the County treasurer.

"(3) Any and all money now available or which shall become available from the federal government through the federal bureau of public roads or any other federal agency created and organized for the disbursement or allocation of federal funds in furtherance of any powers of the Authority.

"(4) Any and all money that may at any time be appropriated by the state of Indiana in furtherance of any powers of the Authority.

"(5) Any and all money heretofore collected and either paid over or payable to the treasurer of the County for the account of any metropolitan thorough-

fare authority in the County created under the provisions of Acts 1963, chapter 386.

"(6) Any and all money received as proceeds from the sale of bonds of the Authority as provided in this act [19-5-3-1—19-5-3-25].

"(7) Any and all money to be collected by the Authority pursuant to any acts providing for the use of parking meters under the control of the Authority, subject to the fulfillment of any obligation pertaining to the collection of such money pursuant to any bonded indebtedness assumed by the Authority.

"(8) Any and all money in the cigarette tax fund of the state available for distribution to the cities and towns in the County for deposit in the cumulative capital improvement funds of such cities and towns pursuant to Acts of 1947, chapter 222 [6-7-1-1—6-7-1-36], as last amended by Acts of 1965, chapter 225, or as later amended or superseded. The auditor of state shall pay over such money, as it becomes available for distribution, to the controller of the Authority. Provided, however, That such money allocated to cities and towns for their respective general funds is not included herein and shall continue to be distributed and paid to the cities and towns in the County as provided by said Acts of 1947, chapter 222 [6-7-1-1—6-7-1-36], as amended or superseded. Provided, further, That all funds appropriated to the capital improvement board of managers of the County by the 95th General Assembly from such cigarette tax funds shall be paid to the treasurer of the County for the use of said capital improvement board, and nothing herein shall be deemed to affect or reduce said appropriations.

"(9) The portion of the Indiana inheritance tax retained by or payable to the County. All such money shall be paid to the controller of the Authority as it becomes available for distribution.

“(10) Any and all money received by the Authority in the exercise of its powers or control and use of its property.”

Acts 1969, ch. 173, § 1403, p. 357; IC 1971, 18-4-14-3, IND. ANN. STAT., § 48-9505 (Burns, 1972), reads as follows:

“18-4-14-3 [48-9505]. Allocation of state funds to excluded cities and included towns.—This act [18-4-1-1—18-4-15-2] shall not affect or limit the right of each excluded city and included town to receive the same allocations of moneys collected by the state of Indiana as are allocated to the same under other applicable law, including allocation from the motor vehicle highway account fund with respect to roads which the same maintain and allocations from the cigarette tax fund and alcoholic beverage fee and tax allocations as provided by applicable law.”